

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

JENNIFER ANNE KUKLA,

Defendant-Appellant.

UNPUBLISHED

October 6, 2009

No. 282017

Macomb Circuit Court

LC No. 2007-002806-FC

Before: Davis, P.J., and Murphy and Fort Hood, JJ.

PER CURIAM.

Following a jury trial, defendant was found guilty but mentally ill, MCL 768.36(1), of two counts of first-degree premeditated murder, MCL 750.316(1)(a). She was sentenced to concurrent terms of life in prison. She appeals as of right. We affirm.

Defendant's convictions arise from the tragic deaths of her two children, who were killed when defendant slashed their throats. At trial, the prosecution presented several lay witnesses who testified about defendant's bizarre conduct and statements before and after the killings. According to several witnesses, defendant appeared frantic and distraught on the day before the killings, stated that she was hearing voices, appeared to speak to someone who was not present, and claimed that she had been hypnotized and done bad things in the past. When defendant's sister arrived at defendant's house the next day, defendant advised that she had killed her children and would be going to hell. Defendant told her sister to call the police. When the police arrived shortly thereafter, defendant appeared calm and also told them she was going to hell because she had just killed her kids. The police discovered defendant's children in the bedroom. They both died from multiple stab wounds, primarily to their throats. Defendant had four or five cuts to her lower wrist, but none were life threatening.

In addition to the testimony of bizarre behavior, the prosecution also presented lay witnesses who testified that defendant was a functioning alcoholic who was experiencing numerous life stresses. A neighbor and friend testified that just days before the murders, defendant advised that her employer was strictly adhering to work schedules. Defendant complained that her children had kept her up late, causing her to be late for work, but her employer told her not to come in. As a result of this incident, defendant stated that she could just "kill" her kids. To the neighbor, this statement was made in frustration. Additionally, defendant was having trouble with car maintenance, having trouble maintaining her trailer, and having trouble obtaining running water due to frozen pipes. Defendant also believed that a family

member had called child protective services, an agency that had removed defendant's children in the past.

Defendant presented a defense of legal insanity. Three psychologists examined her before trial. The night before the murders, defendant reported hearing a sinister voice repeatedly warn her that "they" were coming, and she believed that people were planning on taking her children to a place where they would be sexually molested, tortured, and eaten. She explained that she killed her children to protect them from a fate worse than death. All three psychologists who examined defendant opined that she was legally insane at the time of the killings. The experts also acknowledged that one can experience a psychotic break that was subject to an insanity defense, but a break induced by alcohol hallucinations did not provide a legal defense. Despite the expert testimony, the jury found that defendant was guilty but mentally ill for the murders of her two children.

On appeal, defendant alleges that the evidence presented was legally insufficient to support the first-degree murder convictions, and the verdict was against the great weight of the evidence where the evidence regarding insanity was undisputed. We disagree. The sufficiency of the evidence is evaluated by reviewing the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find every element of the crime proven beyond a reasonable doubt. *People v Petrella*, 424 Mich 221, 268-270; 380 NW2d 11 (1985). This Court "review[s] for abuse of discretion a trial court's grant or denial of a new trial on the ground that the verdict was against the great weight of the evidence." *People v Unger*, 278 Mich App 210, 232; 749 NW2d 272 (2008); see also *People v Lemmon*, 456 Mich 625, 648 n 27; 576 NW2d 129 (1998).

A new trial may be granted where the verdict is against the great weight of the evidence, but only where the evidence preponderates heavily against the verdict and a serious miscarriage of justice would otherwise result. *Lemmon*, *supra* at 635, 640-641. Absent exceptional circumstances, issues of witness credibility are for the jury, and the trial court may not substitute its view of a witness' credibility for the constitutionally guaranteed jury determination thereof. *Id.* at 642. Therefore, in deciding a motion for a new trial, a trial court should determine whether the defendant is truly attacking the weight of the evidence or, rather, whether the motion poses "a question [regarding] the credibility of witnesses testifying to diametrically opposed assertions of fact." *Id.* at 645.

A defendant in a criminal proceeding is presumed sane. *People v Murphy*, 416 Mich 453, 463; 331 NW2d 152 (1982). Therefore, the prosecutor need not establish the defendant's sanity nor present any evidence on that issue. *People v Jones*, 151 Mich App 1, 5; 390 NW2d 189 (1986). Rather, the defense must propose to establish legal insanity at the time of the charged offense. MCL 768.20a. "It is an affirmative defense to a prosecution for a criminal offense that the defendant was legally insane when he or she committed the acts constituting the offense." MCL 768.21a(1). An individual is legally insane if she proves, as a result of mental illness as defined in the mental health code, that she lacked the substantial capacity to appreciate the nature and quality or the wrongfulness of her conduct or lacked the ability to conform her conduct to the requirements of the law. *People v Carpenter*, 464 Mich 223, 230-231; 627 NW2d 276 (2001); MCL 768.21a(1). By statute, MCL 768.21a(3), the defendant has the "burden of proving the defense of insanity by a preponderance of the evidence." See also *Carpenter*, *supra* at 231.

A defendant can be found guilty of an offense because of a mental illness, but not be deemed legally insane at the time the offense was committed. *Id.* at 231-232.

Despite the assertion of an insanity defense, the trier of fact may find a defendant guilty but mentally ill if: (a) the defendant is found guilty beyond a reasonable doubt of the charged offense; (b) the defendant proved, by a preponderance of the evidence, that she was mentally ill at the time of the commission of the offense; and (c) the defendant did not establish, by a preponderance of the evidence, that she “lacked the substantial capacity either to appreciate the nature and quality or the wrongfulness of ... her conduct or to conform ... her conduct to the requirements of the law.” MCL 768.36(1). The Legislature created the guilty but mentally ill verdict to limit the number of persons who were improperly being relieved of all criminal responsibility by way of the insanity verdict, and it is within the power of the Legislature to remedy what it views as a misuse of the law. *People v Ramsey*, 422 Mich 500, 512; 375 NW2d 297 (1985). When a defendant is found guilty but mentally ill, the court shall impose any sentence that could be imposed upon a defendant who is convicted of the same offense. MCL 768.36(3); *Carpenter, supra* at 232. If incarcerated, the defendant must be evaluated and given such treatment as is medically needed for her mental illness. *Id.* Thus, when found guilty but mentally ill, a defendant is not absolved of criminal responsibility, but is provided psychiatric treatment. *People v Stephan*, 241 Mich App 482, 491; 616 NW2d 188 (2000).¹

Although the defendant bears the burden of proving insanity at the time of the charged offense, the trier of fact must assess the evidence offered in support of insanity. When evidence is offered in support of an insanity defense at trial, the trier of fact must determine whether the accused was sane or insane at the time of the charged offense. *People v VanDiver*, 79 Mich App 539, 541; 261 NW2d 78 (1977). “[T]he question of the sufficiency of evidence is to be resolved by the jury unless there is no evidence at all upon a material point.” *Id.*

It should never be forgotten that it is the jury (or the judge if a jury is waived) who is the ultimate trier of the fact of criminal insanity. In most cases, the expert knowledge of psychiatrists can be of assistance to the jury or judge in arriving at their determination, but under our system of justice that ultimate determination rests with the court or a defendant’s jury of his peers. [*People v Martin*, 386 Mich 407, 422; 192 NW2d 215 (1971).]

Additionally, the testimony of lay witnesses may be competent evidence of a defendant’s mental illness; the jury is not required to accept the opinions offered by experts. *People v Clark*, 172 Mich App 1, 8-9; 432 NW2d 173 (1988). The testimony of lay witnesses may also be competent

¹ Before 1994, when a defendant raised an insanity defense and introduced even slight evidence in support of insanity, the burden shifted to the prosecution to prove beyond a reasonable doubt that the defendant was sane at the time the crime was committed. *Stephan, supra* at 488-489. In 1994, MCL 768.21a was amended to clarify that a defendant has the burden of proving insanity by a preponderance of the evidence. *Stephan, supra* at 489-490. Because sanity is not an element of first-degree premeditated murder, the Legislature is constitutionally permitted to impose the burden of proving insanity upon a defendant. *People v Mette*, 243 Mich App 318, 326-327 n 4; 621 NW2d 713 (2000).

evidence of sanity and may rebut expert testimony on the issue of insanity. *Murphy, supra* at 465. The probative value of the opinion on insanity is contingent on the facts upon which it is based. *People v Dobben*, 440 Mich 679, 697; 488 NW2d 726 (1992). The facts and circumstances utilized by the expert to form the opinion are essential for a determination regarding whether the opinion expressed is correct or contradictory. *Id.* [W]ithout examination of the foundation of the opinion, the factfinders' evaluation of the relative value of the opinions offered is necessarily circumscribed and the reliability of its ultimate determination correspondingly compromised." *Id.* The purpose of expert testimony is to assist the trier of fact. *People v Smith*, 425 Mich 98, 106; 387 NW2d 814 (1986); see also MRE 702. Therefore, it is critical that the foundations for the expert opinion are set forth for the trier of fact to evaluate the opinion evidence.

Although the experts opined that defendant was legally insane at the time of the homicides, they acknowledged that their opinions were based on subjective assessments of the evidence and self-reporting by defendant. That is, because no one else was present at the time of the crimes, they had to evaluate all of the witness statements and defendant's account of what occurred. Additionally, it was acknowledged that, if defendant's psychotic break was a result of alcohol hallucinations, she would not be entitled to the legal defense of insanity. Nonetheless, Dr. Clark opined that defendant did not have that much to drink and had stopped drinking after approximately four beers, despite a habit of drinking six to twelve beers on a daily basis. Dr. Clark gave credence to defendant's report of alcohol use. However, contrary to defendant's own statement, her sister testified that defendant had approximately four beers and she was seemingly drunk. Later that evening when the sister returned to pick up a car seat, defendant had consumed an additional seven to eight beers. Therefore, the evidence regarding alcohol use on the night in question conflicted.

Furthermore, the expert testimony revealed that a psychotic break normally lasted for an extended duration. In this case, defendant's psychotic break only lasted for a short period of time. Although this was unusual, the experts opined that it did not preclude a finding of legal insanity. Further, the psychotic break caused defendant to believe that she had to adhere to the voices; she had to kill her daughters or they would be subjected to a far worse fate. However, the voices also told defendant to kill herself. Yet, defendant did not kill herself, and the injury that defendant inflicted to herself was deemed not life threatening. On the contrary, defendant's sister opined that the wounds appeared to be significant. Therefore, although the experts opined that defendant suffered a psychotic break that caused her to kill her children, the jury had evidence that defendant did not adhere to the request of the voices to the extent defendant was told to kill herself.

Moreover, legal insanity arose where a person failed to appreciate the wrongfulness of the conduct. In this case, defendant acknowledged on multiple occasions that she knew right from wrong and would go to hell because of her acts. However, an expert opined that the reference to police and hell may have meant that the police would literally take defendant to hell. This dispute regarding the import of defendant's statements presented a factual issue that the jury was required to resolve.

Additionally, at the conclusion of defendant's police interview, when asked if she had anything else to state, defendant answered, "Don't have kids." Dr. Clark was aware of the statement, but did not ask defendant about it. None of the experts commented upon defendant's

frustration with her children and the impact on her employment. Nonetheless, Dr. Clark continued to opine that the homicides were not the result of the financial stresses and alcohol use, but rather legal insanity. The jury did not follow the opinions offered by the experts, but rather concluded that defendant was guilty but mentally ill at the time of the homicides.

In this case, review of the expert testimony revealed that it was subjective, based on self-reporting by defendant, and contradicted by testimony of lay witnesses. The jury is not required to follow expert testimony on the issue of insanity and may rely on lay witnesses. *Murphy, supra*. The value of an expert's testimony is contingent upon the facts and circumstances upon which it is based. *Dobben, supra*. Here, the experts acknowledged that there were foundational questions for which they made assumptions. It is the province of the jury to resolve these issues. Therefore, there was sufficient evidence to support the jury verdict, and the verdict was not against the great weight of the evidence.²

Affirmed.

/s/ Alton T. Davis
/s/ William B. Murphy
/s/ Karen M. Fort Hood

² On remand, the trial court denied defendant's motion for new trial. Defendant contends that the trial court relied on "speculation" to conclude that there was a basis for the jury verdict. We disagree with defendant's characterization that the trial court's ruling was based on speculation. The trial court merely acknowledged the subjective nature of the expert testimony and recognized that the legal insanity opinion was based on assumptions and self-reporting.